

AUG 21 2008

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5981

DATE COMPLAINT FILED: March 14, 2008

DATE OF NOTIFICATION: March 21, 2008

RESPONSE RECEIVED: May 14, 2008

DATE ACTIVATED: May 21, 2008

EXPIRATION OF SOL: October 12, 2012

COMPLAINANT:

Will Shafroth

RESPONDENTS:

Jared Polis

Friends of Jared Polis Committee and

**Debbie K. Marquez, in her official
capacity as treasurer**

RELEVANT STATUTES:

2 U.S.C. § 431(8)

2 U.S.C. § 431(13)

2 U.S.C. § 434(b)

11 C.F.R. § 100.33

11 C.F.R. § 100.52

11 C.F.R. § 100.111

11 C.F.R. § 104.3

11 C.F.R. § 104.7

11 C.F.R. § 110.10

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

**This matter arises out of a complaint filed with the Federal Election Commission (the
"Commission" or "FEC") alleging that Friends of Jared Polis and Debbie K. Marquez, in her
official capacity as treasurer, (the "Committee") violated the Federal Election Campaign Act of**

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1 1971, as amended (the "Act"), when it failed to disclose employer or occupation information for
2 over 50 contributors in its 2007 October Quarterly Report.¹ In its response, the Committee offers
3 evidence that it used "best efforts" to comply with the disclosure requirements of the Act. In
4 addition, the Complainant alleges that Jared Polis and the Committee (collectively
5 "Respondents") attempted to avoid FEC disclosure requirements in order to disguise how
6 Committee funds were spent by reporting in-kind contributions from Polis in its 2007 October
7 Quarterly and Year-End Reports, and in the same reports disclosing disbursements to Polis in the
8 same amounts as the reported in-kind contributions. The Committee denies that contributions
9 from and disbursements to Polis are in violation of the reporting requirements of the Act.

10 After a review of the available information, we recommend that the Commission find no
11 reason to believe that Friends of Jared Polis and Debbie K. Marquez, in her official capacity as
12 treasurer, and Jared Polis violated the Act by failing to disclose identifying information for
13 contributors in violation of 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.7(b). We also
14 recommend that the Commission find no reason to believe that Friends of Jared Polis and Debbie
15 K. Marquez, in her official capacity as treasurer, and Jared Polis violated 2 U.S.C. § 434(b) by
16 failing to accurately report in-kind contributions and disbursements, and close the file.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Employer and Occupation of Contributors**

19 In this matter, the Complainant alleges that the Committee violated the Act when it failed
20 to obtain and disclose employer and occupation information for 50 contributors included in its
21 2007 October Quarterly Report. See 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.7(b). In its

¹ The Complainant, Will Shafroth, and Respondent, Jared Polis, were both Democrats seeking Colorado's Second District Congressional seat.

1 disclosure report, the Committee reported that the required "information [was] requested." The
2 Committee amended its 2007 October Quarterly Report on January 8, 2008 and reported the
3 employer and occupation for eight contributors, leaving 42 contributors with unknown employers
4 and occupations. The contributions disclosed with missing employer and occupation information
5 comprise about 9% of the Committee's 447 disclosed receipts for the reporting period.

6 The treasurer of a political committee must identify persons who make contributions that,
7 when aggregated, exceed \$200 for the election cycle (*see* 2 U.S.C. § 434(b)(3)(A); 11 C.F.R.
8 § 104.7(b)) by including the person's name, address, occupation and name of employer. 2 U.S.C.
9 § 431(13)(a); 11 C.F.R. § 100.12. All written solicitations for contributions must include a clear
10 request for the required contributor information. 11 C.F.R. § 104.7(b). In addition, the
11 solicitation must include an accurate statement of Federal law regarding the collection and
12 reporting of individual contributor identification. *Id.* In the event the contributor does not
13 provide this information to the committee, the committee must use "best efforts" to "obtain,
14 maintain and submit the information." 11 C.F.R. § 104.7(a). In order to demonstrate "best
15 efforts," the treasurer of the committee must make at least one effort after the receipt of the
16 contribution to obtain the missing information. 11 C.F.R. § 104.7(b)(2). Such effort shall
17 consist of either a written request sent to the contributor or an oral request to the contributor
18 documented in writing. The written or oral request must be made no later than 30 days after the
19 receipt of the contribution. *Id.* When a committee submits evidence proving that it has complied
20 with the Commission's "best efforts" requirements, the Committee shall be considered in
21 compliance with the Act. 11 C.F.R. § 104.7(a).

22 In response to the Complaint, the Committee asserts that it complied with the
23 requirements of 11 C.F.R. § 104.7(b) in attempting to obtain the required contributor

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1 information. As evidence of its compliance, the Committee submitted a sworn affidavit from its
2 Finance Director, which attests to the Committee's efforts, including contacting each contributor
3 by letter and reviewing previous contributor information in an attempt to obtain missing
4 information. The Committee also attached to the affidavit its standard solicitation, which
5 requests all identifying information required by the Act and utilizes language recommended by
6 11 C.F.R. § 104.7(b)(1) informing contributors that Federal law requires "best efforts" to collect
7 and report the name, mailing address, occupation, and name of employer of individuals whose
8 contributions exceed \$200 in an election cycle. In addition, the Committee attached to the
9 affidavit a sample follow-up letter, which the Finance Director states in the affidavit was sent to
10 any individual donor who failed to provide occupation and employer information at the time of
11 the contribution. The letter requests the missing information and again informs the contributor
12 that Federal law requires that the Committee obtain identifying information. The Committee also
13 points out that when it received responses to its request for the identifying information, it
14 amended disclosure reports accordingly.

15 Therefore, based on the available information, we recommend that the Commission find
16 no reason to believe that Friends of Jared Polis and Debbie K. Marquez, in her official capacity
17 as treasurer, and Jared Polis violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.7(b) by failing to
18 disclose identifying information for contributors.

19 **B. In-Kind Contributions from the Candidate**

20 The complaint alleges that the Committee is attempting to disguise financial activity and
21 avoid FEC disclosure requirements by accepting in-kind contributions from the candidate in the
22 form of payments for campaign expenses from his personal funds, and then later reimbursing him
23 for the payments and reporting the reimbursements as disbursements. In support, the complaint

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1 identifies two in-kind contributions from the candidate, one for \$11,000 reported in the
2 Committee's 2007 October Quarterly Report and one for \$10,000 reported in the Committee's
3 2007 Year-End Report for "labor costs." Polis and the Committee claim that the contributions
4 were related to expenses for hiring individuals specifically to assist with a fact-finding tour that
5 the candidate took to Iraq. Polis paid these expenses out of his own pocket and was reimbursed
6 by the Committee.

7 Under the Act, an expenditure by a candidate from his or her personal funds for campaign
8 expenses is considered a contribution to the committee. See 2 U.S.C. § 431(8)(A)(i) and
9 (9)(A)(i); 11 C.F.R. §§ 100.52(a) and 100.111(a). Polis paid almost \$20,000 for Committee
10 expenses from his personal funds between July 1 and October 31, 2007, and another \$7,843 from
11 November 1, 2007 through December 1, 2007. These expenditures were reported as in-kind
12 contributions in the Committee's disclosure reports. Almost immediately after these expenses
13 were paid by Polis, the Committee reimbursed Polis for all of the expenditures he had made from
14 personal funds. The reimbursements were reported as disbursements to the candidate. This is
15 consistent with the Commission's regulations and guidance set forth in Advisory Opinions, in
16 that the reimbursed contributions are considered "expenditures . . . that were initially treated as
17 contributions," and are both expenditures and contributions under the Act because they constitute
18 a payment made, and a loan or something of value given, for the purpose of influencing an
19 election for Federal office. 11 C.F.R. §§ 100.111 and 100.52. The "contributions" in the form of
20 payments from the candidate's personal funds for campaign expenses were reported as in-kind

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1 contributions to the Committee, and the reimbursement of funds to the candidate is considered an
2 expenditure by the Committee and were reported as disbursements to the candidate.² See
3 11 C.F.R. §§ 104.13(a); 104.3(b) and Advisory Opinions 1992-1 and 2003-31 (advising a
4 committee that expenditures made from a candidate's personal funds for campaign expenses are
5 contributions and should be reported as in-kind contributions by the committee, while the
6 reimbursement by the committee to the candidate should be reported as a disbursement by the
7 committee).

8 Based on available information, it appears that the Committee properly disclosed the in-
9 kind contributions it received from the candidate and the subsequent reimbursements it made to
10 the candidate. The Committee adhered to the relevant reporting requirements by disclosing the
11 payment of expenses by the candidate as in-kind contributions and reporting the reimbursement
12 of the expenses as disbursements to the candidate. Accordingly, we recommend that the
13 Commission find no reason to believe that Friends of Jared Polis and Debbie K. Marquez, in her
14 official capacity as treasurer, and Jared Polis violated 2 U.S.C. § 434(b) by failing to accurately
15 report in-kind contributions and disbursements and close the file.

² The candidate must provide the committee with appropriate documentation of each expense exceeding \$200 for which he pays. Appropriate documentation consists of a receipt or invoice from the payee, or a cancelled check, or in the case of payment by credit card, a monthly billing statement or customer receipt and the cancelled check used to pay the credit card account. See 11 C.F.R. § 102.9. There is no allegation or information to suggest the Committee does not have appropriate documentation in this matter.

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III. RECOMMENDATIONS

1. Find no reason to believe that Friends of Jared Polis and Debbie K. Marquez, in her official capacity as treasurer, and Jared Polis violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.7(b) by failing to disclose identifying information for contributors;
2. Find no reason to believe that Friends of Jared Polis and Debbie K. Marquez, in her official capacity as treasurer, and Jared Polis violated 2 U.S.C. § 434(b) by failing to accurately report in-kind contributions and disbursements;
3. Approve the attached Factual and Legal Analysis;
4. Approve the appropriate letters; and
5. Close the file.


Thomasenia P. Duncan
General Counsel

Ann Marie Terzaken
Associate General Counsel
for Enforcement

8-20-08
Date

BY:


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